

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AL D. BOWENS**

Claimant

VS.

**CONCRETE MATERIALS COMPANY  
OF KANSAS, LLC**

Self-Insured Respondent

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Docket No. 1,026,085

**ORDER**

Respondent appealed the January 3, 2006, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

Claimant alleges he injured both upper extremities from October 19 through October 28, 2005, due to the work he was performing for respondent. In the January 3, 2006, Order, Judge Clark found claimant sustained a work-related injury on October 19, 2005, which arose out of and in the course of claimant's employment with respondent.

Respondent appealed and in its application for review requested the Board to address the following issues:

1. Did claimant sustain personal injury by accident arising out of and in the course of his employment with respondent?
2. Is claimant entitled to receive temporary total disability benefits?

Neither party filed a brief with the Board. Accordingly, the Board does not have the benefit of their analysis of the evidence or the law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes that the January 3, 2006, Order should be affirmed.

In June 2004, claimant commenced working for respondent as a driver of a concrete-mixing truck. Claimant alleges that on October 19, 2005, he lost his footing while washing concrete from the drum of his truck and that he grabbed a ladder to keep from falling. Claimant described the accident, as follows:

Well, I was washing down the back of my truck, the concrete that's inside the spinning drum. And as I was coming back down to do the hopper area down below there, I lost my footing. And luckily, I had ahold [sic] of the ladder rail with this [left] hand.

. . . And as I fell, I just grabbed on like that and my hand was already with the water hose in it on the -- rested on the chute because I was trying to wash it out. And luckily for me, the chute was unlocked from down below. So when I fell . . . the chute swung around which allowed me to then grab ahold [sic] of the ladder completely with both hands and I just slid on back down.<sup>1</sup>

Following that incident, claimant initially noticed tightness in both arms and tingling in his left arm. When claimant returned to respondent's shop, he told his supervisor, John Sears, that he thought he had injured himself. But Mr. Sears ignored him.

The day following the accident, claimant told Mr. Sears that he had scheduled a doctor's appointment on October 25. But on the day of the appointment, Mr. Sears would not permit claimant to leave work. Claimant then rescheduled his doctor's appointment to November 1. Claimant's work, however, did not interfere with that appointment as respondent terminated claimant on October 28.

On November 1, 2005, claimant consulted Dr. Bernard F. Hearon. The medical notes from that visit indicate claimant provided a history of having bilateral elbow pain due to his incident at work. It appears Dr. Hearon concentrated his examination on claimant's left elbow at their November 1 visit. And Dr. Hearon initially diagnosed left elbow injury, posttraumatic left elbow pain and left elbow lateral epicondylitis. But when claimant saw Dr. Hearon at their second visit on November 8, the doctor diagnosed right elbow injury, posttraumatic right elbow pain and right elbow lateral epicondylitis.

The Board finds claimant's testimony is consistent with the medical records introduced to date and that it is credible. Accordingly, the Board affirms Judge Clark's finding that claimant sustained personal injury by accident arising out of and in the course of his employment with respondent.

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<sup>1</sup> P.H. Trans. at 6.

Respondent has raised the issue of whether claimant is entitled to receive temporary total disability benefits. The Board, however, does not have the jurisdiction at this juncture of the claim to review a preliminary hearing finding that claimant has met the definition of being temporarily and totally disabled as, first, that issue is not one of the jurisdictional issues set forth in K.S.A. 44-534a(a)(2) and, second, the Judge did not exceed his jurisdiction by awarding claimant those benefits.

In summary, the January 3, 2006, Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>2</sup>

**WHEREFORE**, the Board affirms the January 3, 2006, Order entered by Judge Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 2006.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> K.S.A. 44-534a(a)(2).